Kevin M. Zietz, Esq. (SBN 186244)
E-mail: kevin@zietzlaw.com
LAW OFFICES OF KEVIN M. ZIETZ, PC
16055 Ventura Boulevard, Suite 432
Encino, California 91436
Tel: (818) 981-9200
Fax: (818) 981-9201

Attorneys for Plaintiff,
WALI SHAMS

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WALI SHAMS Plaintiff, v. LIFE INSURANCE COMPANY OF NORTH AMERICA; EXELIS SYSTEMS CORPORATION LONG-TERM DISABILITY PLAN; and DOES 1 to 10, Inclusive, Defendants.	Case No. : **COMPLAINT FOR DAMAGES UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT** **[29 U.S.C. §1132(a)(1)]**

Plaintiff, WALI SHAMS (hereinafter referred to as "Plaintiff"), complains of Defendants LIFE INSURANCE COMPANY OF NORTH AMERICA (hereinafter referred to as "LINA"), and EXELIS SYSTEMS CORPORATION LONG-TERM DISABILITY PLAN, (hereinafter referred to as the "PLAN"), as follows:

JURISDICTION AND VENUE

1. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §§ 1331, 1337 and 29 U.S.C. §1132(a)(1), (e), (f), and (g), of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1101. et. seq. (hereafter ERISA) as it

involves a claim by Plaintiff for disability benefits under an employee benefit plan regulated and governed under ERISA. Jurisdiction is predicated under these code sections as well as 28 U.S.C. §1331 as this action involves a federal question.

2. The events or omissions giving rise to Plaintiff's claim occurred in this judicial district, thus venue is proper here pursuant to 28 U.S.C. §1391(b)(2), and the ends of justice require it.

3. The ERISA statute at 29 U.S.C. §1133, in accordance with Regulations of the Secretary of Labor, provides a mechanism for internal appeal of benefit denials. Those avenues of appeal have been exhausted.

4. Plaintiff exhausted his appeal rights on or about March 1, 2017, at which time he was informed that LINA was upholding the decision to terminate his Long-Term Disability (LTD) benefits as of October 14, 2015, and that he now has the right to bring a civil action under section 502(a) of ERISA.

GENERAL ALLEGATIONS

5. Plaintiff is informed and believes and thereon alleges that the PLAN is an employee welfare benefit plan established and maintained by Plaintiff's employer, Excelis Systems Corporation, to provide its employees with group long-term disability insurance, to pay a portion of a covered employee's income during a period of disability.

6. The PLAN can be sued as an entity pursuant to 29 U.S.C. §1132(d)(1).

7. Plaintiff is an individual citizen and resident of the State of California, County of Los Angeles, residing within the Central District of California.

8. On information and belief, LINA issued a policy that fully insures the PLAN, therefore the company is contractually obligated to pay benefits for claims covered and approved through the PLAN.

FACTUAL BACKGROUND

9. At all times relevant hereto, Plaintiff, currently age 52, was employed as a Linguist, was and is a participant and beneficiary of the PLAN.

10. Plaintiff last worked on April 17, 2013. He began experiencing neck pain working as a contractor at Bagram Air Force Base in Afghanistan.

11. On or about January 31, 2013, Plaintiff was running to a bunker because there was a rocket attack. He hit is head in the bunker and immediately felt sharp pain in his neck.

12. In February 2014, LINA reviewed DOT job descriptions and determined that Plaintiff's occupation was best represented by two medium physical demand level occupations: Translator and Intelligence Clerk.

13. The policy defines disability as follows:

"The Employee is considered Disabled if, solely because of Injury or Sickness, he or she is:

1. unable to perform the material duties of his or her Regular Occupation; or
2. unable to earn 80% or more of his or her Indexed Covered Earnings from working in his or her Regular Occupation.

After Disability Benefits have been payable for 24 months, the Employee is considered Disabled if, solely due to Injury or Sickness, he or she is:

1. unable to perform the material duties of any occupation for which he or she is, or may reasonably become, qualified based on education, training or experience; or
2. unable to earn 80% or more of his or her Indexed Covered Earnings."

14. Following a 180-day elimination period, Plaintiff became eligible to receive LTD benefits beginning October 15, 2013.

15. An MRI of the cervical spine completed on April 25, 2013 revealed significant pathology.

/ / /

16. In July 2013, Plaintiff underwent a two-level cervical fusion.

17. In November 2013, Plaintiff underwent a second cervical diskectomy and fusion at a different level of the spine.

18. On or about December 16, 2013, LINA sent Plaintiff a letter approving payment of LTD benefits effective October 15, 2013.

19. On February 20, 2014, LINA terminated the payment of LTD benefits under the "own occupation" definition. The denial was based upon internal medical record reviews wherein LINA'S Nurse Case Manager and Medical Director concluded the available medical evidence did not demonstrate an ongoing functional impairment that would preclude Plaintiff from performing the material duties of his occupation as a Linguist.

20. On or about March 18, 2014, Plaintiff submitted a timely written request for appeal that included medical records from his neurosurgeon.

21. On or about June 30, 2014, LINA had Plaintiff's file reviewed by a doctor board certified in Neurological Surgery. The reviewing doctor opined that some permanent restrictions and limitations would be expected given the inherent lack of range of motion that is a byproduct of the spinal fusion procedures. The doctor opined that *standing* was limited at that time to occasionally, no more than four hours in an eight hour day, secondary to active neck pain; *walking* was limited to no more than four hours in an eight hour day; *sitting* was allowed up to eight hours in an eight hour day secondary to active neck pain; *lifting and carrying* was limited to nor greater than 10 pounds occasionally and a negligible amount frequently; *pushing/pulling* was limited to no greater than 10 pounds occasionally; *reaching overhead/above shoulders* occasionally, and *reaching below the waist* was limited to occasionally secondary to neck pain; *kneeling, squatting, crawling, crouching, bending and stooping* was limited to occasionally secondary to low back pain.

/ / /

22. On or about July 11, 2014, LINA made a determination to overturn its previous decision to deny LTD benefits under the "own occupation" definition of disability.

23. On July 19, 2014, after reviewing the DOT and medical record review (completed on June 20, 2014), LINA determined that Plaintiff's restrictions and limitations were not consistent with the required demand of his occupation of Intelligence Clerk.

24. On June 30, 2014, LINA's vocational department conducted a Transferable Skills Analysis (TSA) using limitations and restrictions outlined by the LINA'S reviewing doctor. The TSA concluded that Plaintiff was capable of performing any one of four sedentary occupations.

25. On or about October 2, 2014, LINA performed a TSA and no sedentary occupations were found to be appropriate, but two light duty occupations were found to be appropriate.

26. On or about December 23, 2014, Plaintiff saw his neurosurgeon at Kaiser Permanente. The doctor's notes indicate that Plaintiff had significant posterior muscular pain that was causing radiation to his head and tension type headaches. The doctor opined that no surgical treatment can be offered to improve the situation, and that a lot of Plaintiff's neck pain is probably stemming from his extensive prior surgeries.

27. On June 30, 2015, LINA sent Plaintiff a letter informing him that LTD benefits were being denied beyond October 15, 2015, which is when the policy's definition of disability changed to "any occupation." LINA informed Plaintiff that a TSA determined that he was capable or working full-time as a Research Assistant.

28. On August 6, 2015, Plaintiff submitted a timely written request for appeal, and requested that LINA provide a copy of all reports that supported the denial of benefits.

/ / /

29. On February 4, 2016, Plaintiff submitted additional medical records in support of disability that included a September 23, 2015 letter from his doctor at Kaiser. The treating doctor indicated that Plaintiff has suffered from chronic pain and continues to experience chronic neck pain and daily headaches that are debilitating. Plaintiff's doctor opined that due to his chronic pain and side effects from his pain regimen, it makes his ability to work extremely difficult.

30. On or about March 24, 2016, Plaintiff submitted another letter from his treating doctor at Kaiser. It was noted that Plaintiff's suffered from chronic neck pain and headaches due to a history of cervical fusion. The doctor opined that as follows: "… he cannot return to usual and customary employment or return to the labor market and remains under medical care. He is currently disabled indefinitely, as his condition will not resolve…"

31. On April 22, 2016, LINA upheld the denial of LTD benefits beyond October 14, 2015, on the basis that Plaintiff's diagnosis was not clearly evidenced by the medical records, and that the medical records lack examination findings that document any significant functional loss to his musculoskeletal or neurological systems. Furthermore, LINA concluded that even though Plaintiff was complaining about daily headaches, there was no documentation of functional loss caused by the headaches.

32. On October 18, 2016, Plaintiff submitted another timely written appeal that addressed the results of LINA the TSA completed by LINA on June 29, 2015. Plaintiff submitted an Employability Evaluation concluding that (1) the occupation suggested by LINA was not included in the results of a TSA at any level of transferability, and (2) the job identified by LINA does not meet Plaintiff's wage requirement.

33. On November 28, 2016, Plaintiff supplemented his appeal with a neurological consultation dated October 18, 2016. The doctor noted that Plaintiff complained about his mind feeling foggy all the time due to daily dosages of

Methadone, Morphine and Percoset. The doctor noted that the examination was very difficult to complete because Plaintiff seemed tired and drowsy.

34. The neurologist who saw Plaintiff on October 18, 2016, reviewed the medical records and Plaintiff's Employability Evaluation and opined that he is disabled from any occupation.

35. On March 1, 2017, LINA issued a final denial letter concluding that from a medical standpoint, Plaintiff is capable of working full-time as a Research Assistant II. Furthermore, LINA concluded that Plaintiff has the requisite skill and ability to perform the occupation identified, and the occupation meets Plaintiff's wage requirements.

COUNT ONE

For Damages and Benefits Against Defendants

THE LINE INSURANCE COMPANY OF NORTH AMERICA and EXELIS SYSTEMS CORPORATION LONG-TERM DISABILITY PLAN

(Pursuant to 29 U.S.C. Section 1132(a)(1))

36. Plaintiff hereby re-alleges and incorporates paragraphs 1 through 35 as if fully set forth herein.

37. The LTD policy was initially issued by LINA with an effective date of July 1, 1993. The policy re-issue date is May 1, 2013. The policy renews annually on July 1st.

38. Based upon information and believe, neither the LTD policy nor the Summary Plan Description issued by LINA contains an expressed grant of discretionary authority. Therefore, the standard of review in this case will be de novo.

39. However, should any of the plan documents contain a provision granting the claim administrator discretionary authority, *California Insurance Code* § 10110.6 will render that express grant of discretionary authority null and void.

/ / /

40. Plaintiff's claim is for non-vested employee welfare benefits, therefore the controlling plan is the one that existed when his ERISA cause of action accrued (which is when LTD benefits were finally denied on March 1, 2017).

41. The weight of the medical evidence in the administrative record supports a determination that Plaintiff cannot perform the material duties of any occupation due to medically supported limitations and restrictions.

42. In the event that the court does apply an abuse of discretion standard, Plaintiff alleges that LINA has a conflict of interest because it is the claims administrator and the funding source of claims paid pursuant to the LTD policy that insures the PLAN.

43. In the event that the court applies an abuse of discretion standard, LINA'S claims decision was illogical, implausible, and/or without support in inferences that may be drawn from the facts in the record.

44. As a direct and proximate result of LINA's wrongful denial of LTD benefits, Plaintiff contends that LINA has breached the insurance contract by not paying benefits, payable at the rate of $4,738.00 per month, minus appropriate offsets, from October 14, 2015 to the present and continuing.

45. As a further direct and proximate result of the denial of benefits, and due to LINA's failure to pay benefits, Plaintiff had to engage the services of attorneys to assist him in recovering benefits due his under the terms of the PLAN. Accordingly, Plaintiff will be entitled to reasonable attorney's fees in an amount according to proof pursuant to 29 U.S.C. Section 1132(g)(l).

WHEREFORE, plaintiff demands judgment against Defendants, and each of them, as follows:

Count One

1. Damages for breach of contract pursuant to 29 U.S.C. Section 1132(a)(1)(B), for Long-Term Disability benefits payable at the rate of $4,738.00 per month from October 14, 2015 to the present and continuing;

2. Interest on said amounts in accordance with law;

3. For reasonable attorney's fees and costs in a sum according to proof, pursuant to 29 U.S.C. Section 1132(g)(1).

4. For an order directing LINA to reinstate Plaintiff's benefits and to continue paying monthly LTD benefits as long as the medical and vocational evidence continues to support disability from any occupation.

5. For any further relief that the court deems reasonable and just.

DATED: March 27, 2017

Respectfully submitted,

LAW OFFICES OF KEVIN ZIETZ

Kevin M. Zietz

By:____________________________

Kevin M. Zietz
Attorney for Plaintiff
WALI SHAMS